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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/176,866	10/22/1998	JAMES V. YOUNG	6996	2374

1688            7590            12/05/2001

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[REDACTED]  
EXAMINER

DEMILLE, DANTON D

ART UNIT	PAPER NUMBER
3764	

DATE MAILED: 12/05/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/176,866	YOUNG, JAMES V.
	Examiner Danton DeMille	Art Unit 3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 04 September 2001.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-7, 9 and 15-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-7, 9 and 15-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### *Claim Rejections - 35 USC § 112*

1. **Claims 1-7, 9 remain rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**
2. In claim 1, line 9, it is not clear what the structure the new language is intending to further limit by reciting it is "along at least one surface of the applicator". Is it the applicator removably mounted that is to be "along at least one surface of the applicator"? Reciting that the cavity is "substantially the size of the applicator" appears inaccurate. As shown in figures 5 and 8 the cavity is only a small portion of the "size" of the applicator. To overcome 112 rejections, it is suggested to delete the above recited new limitations and replace the new language of line 11 "the surface" with --an end surface of the applicator--. Such that the claim would then read "an applicator removably mounted to said massage head for transferring the mechanical oscillations to the body, said applicator further having a cavity formed in an end surface of the applicator for permitting skin to be drawn inwardly of the applicator".

### *Claim Rejections - 35 USC § 102*

3. **Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Holt.** As understood, it is maintained that Holt teaches everything claimed. While the Holt device is different from the instant invention, the claims do not define over Holt. Figure 2 shows a massage head 10 driven by a motor through a cable 12 (figure 1). Figure 4 shows the different parts of the applicator and how it is removably mounted by the screw threads in the top of

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housing at 20 onto nipple 16. The nipple 16 is tubular shaped and the portion of the applicator housing mating with nipple 16 is likewise tubular shaped. Therefore, the applicator has a connection tube integrally formed in said applicator. This tube in the applicator is also adapted to pass contaminants from the cavity to the vacuum source. While the plate 28 is adapted to stop most contaminants there will inevitably be contaminants that the plate does not stop. Moreover, if the plate is over loaded contaminants will pass around plate 28. Therefore, the tube is adapted to pass contaminants should they get past plate 28. Element 25 forms a plurality of cavities 26 permitting skin to be drawn inwardly of it. It would appear Holt includes all of the positively recited claim limitations.

*Claim Rejections - 35 USC § 103*

**4. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holt.**

Regarding claim 2, Holt appears silent with regard to any controls for the motor however, the ability to adjust the speed of the motor is well within the realm of the artisan of ordinary skill. It would have been obvious to one of ordinary skill in the art to modify Holt to provide speed control for the motor in order to adjust the vibration of the device. Regarding claim 3, it would have been obvious to one of ordinary skill in the art to modify Holt to provide a collection vial for the vacuum in order to catch any particulate matter from blowing all over from the motor. Holt shows holes in the sides of the housing allowing any particulate matter to blow all over the area. Most vacuum cleaners have a collection means for capturing the particulate matter.

**5. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holt in view of Howerin.** It would have been obvious to one of ordinary skill in the art to modify

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Holt to provide a second vile in the vacuum line to collect any liquid as taught by Howerin to catch any liquid to prevent damage or impairing its efficiency.

6. **Claims 6, 7, 9 and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holt in view of Marshall et al. and Rohrer.** Holt appears silent with regard to the details of the controls of the motor. Providing some conventional means to control the motor would appear to be well within the realm of the artisan of ordinary skill. Marshall teaches a conventional vacuum massaging system that includes controls for both the vibrator and the vacuum source. There also appears to be no unobviousness to the shape of the applicator. Shaping the applicator to be concave as taught by Rohrer to better conform to the shape of the human body would have been an obvious provision. It would have been obvious to one of ordinary skill in the art to modify Holt to use a motor control system as taught by Marshall to best control the operation of the device and to shape the applicator to be concave as taught by Rohrer to better conform to the shape of the human body. If the vibration of Holt's device is too much it would be obvious to turn down the speed of the motor. Means to provide such a function would be necessary.

7. **Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 18 above, and further in view of Howerin.** It would have been obvious to one of ordinary skill in the art to further modify Holt to provide a second vile in the vacuum line to collect any liquid as taught by Howerin to catch any liquid to prevent damage or impairing its efficiency.

***Response to Arguments***

8. Applicant's arguments filed 4 September 2001 have been fully considered but they are not persuasive. It is not clear how much weight can be given the arguments that Holt cannot possibly be used to draw and stretch the fibrous tissue of the human body within a cavity. Clearly the connection tube is capable of applying at least a partial vacuum to the cavity if such suction pressure were applied. The claims merely recite "A massage apparatus for massaging a human body" which the Holt device does do. The only claim limitations that are drawn to stretch the fibrous tissue of the human body is the connection tube. Clearly the connection tube of Holt is capable of withstanding the high pressures that would be required. It is not clear how the claims define over the massage apparatus of Holt.

9. Applicant argues that the soft rubber applicators 25 of Holt would prevent the device from performing as desired however, there are no claim limitations defining this feature over Holt. These arguments are not in scope with the claims.

10. Applicant argues that Holt cannot accomplish what is required by Applicant's claims unless Holt is improperly modified using applicant's specification as a guide however, it is not clear how Holt is to be modified since Holt teaches all of the claim limitations.

11. Applicant also argues that the connection tube be "adapted" to pass contaminants from the cavity and requires that the suction line draws contaminants from the cavity through the connection tube. It is not clear how the connection tube of Holt would not do this. If contaminants from the cavity were to pass around plate 28 they would be drawn into the connection tube and suction line. The plate 28 can't stop everything. More liquefied contaminants would flow around the plate. Should the plate not be cleaned for a long time,

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contaminants would work its way around the plate. The claims only make it a requirement of the connection tube. The connection tube of Holt is clearly capable of passing contaminants should they get past the plate 28. Holt's device is not being modified to remove plate 28. Such is not necessary. The claims don't require it. The claims only require the connection tube to be "capable" of passing contaminants. Clearly the tube of Holt is capable of such a function.

12. The examiner is not using applicant's specification in hindsight to hold the claims obvious because Holt teaches the invention as claimed. Those limitations recited in the claimed are read in light of the specification and are met by Holt. Although operational characteristics of an apparatus may be apparent from the specification, we will not read such characteristics into the claims when they cannot be fairly connected to the structure recited in the claims. See *In re Self*, 671 F.2d 1344, 1348, 213 USPQ 1, 5 (CCPA 1982). The only structure recited in the claims is the connection tube as to whether it is capable of passing contaminants and capable of applying a sufficient vacuum. It is believed that the rigid housing of Holt would be of sufficient construction as to withstand the pressure required and the tube can pass contaminants in aerosolized form.

13. In view of the fact that applicant's arguments do not appear to be commensurate with the scope of the claims the rejection appears proper and made final.

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

15. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

ddd

24 November, 2001

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